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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DOWNTOWN MOTORS, INC.,

Plaintiff and Respondent,

v.

FARIBORZ TAVASSOL-KASHANI,

Defendant and Appellant.

B189855

(Los Angeles County
Super. Ct. No. BC316369)

APPEAL from a judgment and a postjudgment order of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Michael Moghtader for Defendant and Appellant.

Sawyer, Orr & Sawyer, Stephan D. Sawyer and Jason Robert Sawyer for Plaintiff and Respondent.

INTRODUCTION

Plaintiff and respondent Downtown Motors, Inc. (plaintiff) filed an unverified first amended complaint seeking, inter alia, to quiet title to real property against the adverse claim of defendant and appellant Fariborz Tavassol-Kashani (defendant). The case proceeded to trial without any objection by defendant that the first amended complaint was unverified. The trial court entered a judgment in favor of plaintiff.

On appeal from the judgment, defendant contends that plaintiff's failure to verify the first amended complaint, as required in quiet title actions under Code of Civil Procedure section 761.020,¹ was a jurisdictional defect that deprived the trial court of the power to enter a judgment of quiet title. Defendant further contends that because the judgment must be reversed, so too must the postjudgment order awarding plaintiff attorney fees.

We hold that plaintiff's failure to verify the first amended complaint was merely a procedural—not jurisdictional—defect that defendant forfeited by failing to move to strike the first amended complaint and proceeding to trial without objection. We therefore affirm the judgment and the postjudgment order awarding attorney fees.

PROCEDURAL BACKGROUND

Plaintiff filed a verified complaint to quiet title to a certain parcel of real property against the adverse claim of defendant. Prior to trial, plaintiff filed an *unverified* first amended complaint that added a party and causes of action for “recovery of money from dishonored checks” and damages for conversion. Defendant did not demur to or move to strike the unverified first amended complaint.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

The case proceeded to a bench trial.² At no time prior to or during the bench trial did defendant object or otherwise raise with the trial court that the cause of action for quiet title was unverified. Instead, defendant waited until his closing brief to raise the issue for the first time in the trial court. After the parties submitted closing briefs, the trial court issued a statement of decision that, inter alia, ruled in plaintiff's favor on the quiet title issue and denied all cross-claims by defendant. In doing so, the trial court expressly found that defendant had "waived" the argument that the first amended complaint was unverified. The trial court subsequently entered a judgment that quieted title in favor of plaintiff. Defendant filed a timely notice of appeal from the judgment.

Plaintiff then filed a postjudgment motion for an award of attorney fees as the prevailing party, based on the attorney fees provisions in the underlying contractual documents. Defendant did not file written opposition to the motion, and the trial court granted the motion in the amount of \$134,481.00. Defendant filed a timely notice of appeal from the postjudgment order awarding attorney fees.

DISCUSSION

A. Standard of Review

The dispositive issue is whether the trial court had the power to enter a judgment against defendant for quiet title based on an unverified complaint. That is a legal issue that can be raised for the first time on appeal and decided on undisputed facts. (See *Blake v. Ecker* (2001) 93 Cal.App.4th 728, 738, fn. 9, overruled on other grounds in *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107, fn. 5.)

² The trial lasted three days and 13 witnesses testified.

B. The Verification Issue

Defendant contends that sections 760.020³ and 761.020⁴ required that the first amended complaint be verified because it asserted a cause of action for quiet title. Without citation to case law, defendant concludes that the failure to verify the first amended complaint was a “jurisdictional”⁵ defect that deprived the trial court of the power to enter a judgment in favor of plaintiff on the quiet title action. Plaintiff concedes that section 761.020 required the first amended complaint to be verified, but contends that the failure to verify that complaint was not a jurisdictional defect, but rather only a procedural one that can be and was “waived” in this case, citing *Ware v. Stafford* (1962) 206 Cal.App.2d 232, 237. We agree with plaintiff.

³ Section 760.020, subdivision (a), provides: “An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein.”

⁴ Section 761.020 provides in pertinent part: “The complaint shall be verified and include all of the following:”

⁵ As the court in *Bosworth v. Whitmore* (2006) 135 Cal.App.4th 536, we construe defendant’s argument that the trial court lacked “jurisdiction” to be that “the trial court lacked the power or authority to make certain orders, not that the court lacked subject matter jurisdiction. ‘The principle of subject matter jurisdiction relates to a court’s inherent authority to deal with the case or matter before it. In contrast, a court acts in excess of jurisdiction where, even though it has subject matter jurisdiction, it has no jurisdiction or power to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites. [Citation.]’ (*Law Offices of Ian Herzog v. Law Offices of Joseph M. Fredrics* (1998) 61 Cal.App.4th 672, 680 [71 Cal.Rptr.2d 771].)” (*Id.* at p. 545, fn. 9.) In this case, the trial court had subject matter jurisdiction. Plaintiff sued defendant in the trial court to quiet title to real property against defendant’s adverse claim. (§ 760.040 [“The court has complete jurisdiction over the parties to the action and is deemed to have possession and control over the property for purposes of the action *with complete jurisdiction to render the judgment* [for quiet title] provided for in this chapter”].) Therefore, defendant’s “true claim is that the trial court lacked the power to grant relief” to plaintiff on its quiet title claim because the first amended complaint was not verified as required by statute. (*Ibid.*)

In *United Farm Workers of America v. Agricultural Labor Relations Board* (1985) 37 Cal.3d 912 (*United Farm Workers*), the United Farm Workers of America (UFW) filed in the Court of Appeal a timely petition for review of a final order of the Agriculture Labor Relations Board (ALRB), but failed to verify it as required by statute. (*Id.* at p. 914.) When informed of the verification requirement by the clerk of the Court of Appeal, UFW immediately filed a verified petition, albeit three days after the 30 day statutory time limit for filing such petitions. (*Ibid.*) ALRB moved to dismiss the petition as untimely, arguing that the 30 day statutory time limit was jurisdictional, and the Court of Appeal granted the motion. (*Ibid.*)

The Supreme Court reversed, holding that “the failure to verify a pleading -- even where the verification is required by statute -- is a mere defect curable by amendment.” (*United Farm Workers, supra*, 37 Cal.3d at p. 915, citing, inter alia, *Ware v. Stafford, supra*, 206 Cal.App.2d at p. 237.) “Amendment of a pleading may even be allowed at the time of trial, absent a showing of prejudice to the adverse party.” (*Ibid.*)

“‘[T]he proper objection where a party fails to verify a pleading is a motion to strike . . . which may be made only upon timely notice and provides for hearing and extension of time to answer.’ [Citation.] When plaintiff proceeded to trial without objecting to the lack of a verification, she waived any right to object to defendants’ pleading error. [Citations.]” (*Zavala v. Board of Trustees of the Leland Stanford, Jr., University* (1993) 16 Cal.App.4th 1755, 1761 (*Zavala*).)

Here, defendant did not move to strike the unverified first amended complaint for quiet title, or otherwise object in the trial court to the defect, prior to trial. Nor did he question, prior to commencement of trial, the trial court’s power to determine the quiet title cause of action. Instead, he proceeded to defend the quiet title cause of action on the merits before the trial court. He therefore forfeited any procedural defect in the quiet title cause of action, such that the trial court had the power to determine that claim.

In his reply brief, defendant argues for the first time⁶ that he raised plaintiff's failure to verify the first amended complaint in the trial court. Although it is true that defendant raised the issue in the trial court, he did not do so until his closing brief that he filed with the trial court *after* the parties had completed their evidentiary presentations and rested. As the trial court found, by participating in the trial on the merits of the quiet title cause of action without objecting to the trial court's power to determine that claim, defendant forfeited any argument based on the procedural defect in the first amended complaint. (See *Zavala, supra*, 16 Cal.App.4th at p. 1761.)

C. The Postjudgment Award of Attorney Fees

Defendant's challenge to the trial court's postjudgment order awarding attorney fees to plaintiff is predicated solely on the assumption that the trial court lacked jurisdiction to enter judgment in favor of plaintiff for quiet title. According to defendant, that judgment, and any postjudgment orders based thereon, must therefore be reversed. Because we have concluded that the trial court had the power to enter the judgment, there is no merit to defendant's challenge to the order awarding attorney fees.

DISPOSITION

The trial court's judgment and postjudgment order awarding attorney fees are affirmed. Plaintiff is awarded its costs on appeal.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.

⁶ An appellant forfeits contentions not raised in the opening brief. (*Roehl v. Ritchie* (2007) 147 Cal.App.4th 338, 352; *Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 171.)